

WRITTEN POLICIES AND PROCEDURES OF THE BALTIMORE COUNTY POLICE DEPARTMENT

RELATING TO EYEWITNESS IDENTIFICATION

GENERAL

- Visual investigative aids are comprised of: Line-ups, Photograph Identifications, Show-ups, and Forensic Artist Composites.
- Visual investigative aids may be used to assist with the identification or elimination of suspects.
- All visual investigative aids will be conducted in a structured, professional manner designed to clear the innocent, as well as identify suspects in criminal offenses.
- Criminal investigations should not be concluded or otherwise ceased based solely on eyewitness identification.
- Investigating officers must not, by word or gesture, offer opinions or make suggestive comments to any victim/witness concerning the guilt or innocence of a subject before, during, or after any identification procedure. **NOTE:** Victims/witnesses making inquiries about a Department member's opinion shall be informed of this restriction.
- Upon completion of any visual investigative aid process, investigating officers are prohibited from providing any feedback to the victim/witness regarding the results of the identification.
- Investigating officers will record any/all of the victim/witnesses comments and/or any other relevant observations, including their level of confidence, when making or not making an identification.

REFERENCE

- Annotated Code of Maryland, Public Safety Article.

7-9.1 LINE-UPS

GENERAL

- All line-ups will be conducted by the Robbery Unit in accordance with established procedures.
- Line-ups may be requested by the State's Attorney's Office or the investigating officer with approval from his/her supervisor.

REFERENCE

Background

The Criminal Investigations Bureau, Persons Crimes Section is responsible for the Robbery Unit. As prescribed in the Field Manual, the Robbery Unit has sole responsibility for the coordination and execution of all live lineups conducted by the Department. Detailed procedures on conducting a lineup were removed from the Field Manual and are now mentioned as an investigative resource with reference. The last revision (3rd revision) of this Order was made on March 5, 2010.

Purpose

Since this Standard Operating Procedure's (SOP) last revision in 2010, an abundance of empirical research has been published regarding the psychology of non-testimonial pre-trial evidence, such as eyewitness identifications. Cognitive psychologists have concluded that erroneous eyewitness identifications are a leading cause of improper convictions.

To maintain the integrity and continuity in procedures for the fair and impartial identifications of potential suspects in criminal offenses, this SOP is being revised to include procedures whereby the police investigator conducting a lineup does not know which of the participants (suspect and "fillers") is thought to be the suspect. When the administering investigator informs the witness that he/she does not know the identity of the suspect, the procedure is commonly referred to as being "double-blind." Since neither the witness nor the administering investigator knows the identity of the suspect, the administering investigator cannot give the witness verbal or nonverbal cues — whether purposefully or inadvertently — as to the identity of the suspect, which may influence the witness.

A live lineup composed in the manner described in this SOP should minimize the risk of misidentification and have stronger evidentiary value than an identification made not pursuant to these

procedures. Specifically, use of these procedures should maximize the reliability of identifications, minimize unjust accusations of innocent persons, and establish evidence that is reliable and conforms to recognized legal procedures.

Finally, this SOP is to ensure the safest environment possible for civilians, officers, participants, and suspects during the lineup procedure.

Relationship to Department Values

The Criminal Investigations Bureau is committed to maintaining **FAIRNESS** by attaching equal importance to clearing innocent persons as to arresting the guilty. The Criminal Investigations Bureau is committed to **SERVICE** by establishing procedures for the preparation and presentation of live lineups safely and professionally, and taking precautions to avoid a misidentification.

Procedures

General

- The procedures contained in this SOP are intended to serve as general guidelines for the execution of the live lineup (hereafter referred to as "lineup" for this SOP). Further, these procedures are not all-inclusive and may be subject to change on occasion by supervision for circumstances beyond its control. A lineup is a procedure in which a victim or witness to a crime or other incident is asked to identify a suspect/defendant from among a group of persons in order to determine or confirm the identity of the suspect/defendant.
- All lineups will be coordinated and conducted by the Robbery Unit.
- All lineups will be conducted at departmental facilities designated and approved by the Robbery Unit.
- Lineups may be requested by any member (with permission of his/her supervisor), an Assistant State's Attorney, or other law enforcement agency. All requests for lineups will be made to the Robbery Unit Commander.
- Lineups are a police process and not a process of the Courts or State's Attorney's Office.
- The following will be present at all lineups:
 - The investigating officer(s).
 - Robbery supervisor.
 - A member of the States Attorney's Office.
 - Suspect's/Defendant's Attorney or Public Defender.
 - **NOTE:** In some circumstances, a lineup may be executed without the defendant's attorney present if reasonable attempts were exhausted to make contact or they fail to appear as scheduled.
- Attorney's are considered observers during this process and should not be allowed to dictate, distract, or unnecessarily interrupt the lineup process.
- Suspects/defendants will be allowed to confer and be given reasonable access to their attorney or public defender, if requested.
- In those cases requiring a suspect/defendant being physically forced to stand and/or alter their appearance in a lineup, the Robbery Unit supervisor shall consult with the Assistant State's Attorney.
- Robbery Unit personnel conducting lineups shall receive training in lineup procedures to establish uniformity and consistency of such procedures and to establish a high level of competence in carrying out this procedure.
- Personnel shall report any known errors, flaws, or non-conformance with established live lineup procedures that they may observe or become aware of to a supervisor so that corrective action(s) may be taken and safeguards established to protect the innocent and the integrity of the process.

Robbery Unit Commander

- Upon request for a lineup, will assign a Robbery Unit supervisor to review the case and make a recommendation whether a lineup is appropriate. Consultation will be made with the requesting member, his/her supervisor, and the State's Attorney's Office if there is a potential concern for the investigation or prosecution.

- Makes the final determination whether a lineup will be conducted based upon the supervisor's recommendation and any other pertinent information available to him/her.
- Has complete authority over the lineup process and may cancel, postpone or make changes to ensure the safety of participants and the integrity of the lineup at any time.
- Ensures personnel conducting lineups receive training in lineup procedures.

Robbery Unit Supervisor

- Will assign a detective (case coordinator) to review the case and make arrangements for the lineup.
- Will be responsible for delegating assignments/roles (e.g., case coordinator, prisoner security, victim/witness escorts, administering member, etc.) and ensuring that the integrity of the process is not compromised.
- May seek assistance, as needed, from the command requesting the lineup to provide personnel and resources for tasks such as security, transportation, etc.
- Will be responsible for and oversee the execution of the lineup.
- Will ensure that all law enforcement and/or prosecutorial personnel present and involved in the case are knowledgeable about these procedures so that they will not interfere or influence any victim/witness at any point during or after the process.
- Will ensure a lineup case number is assigned for each lineup conducted, and a summary form completed for the Robbery Unit.

Robbery Unit Detective (Case Coordinator)

- Gathers all pertinent information regarding the case and the purpose for the lineup.
 - Ensures that, prior to a lineup, the investigating officer/detective record as complete a description as possible of the suspect provided by the eyewitness. This may include conducting a thorough review of all reports, written statements, audio/video recorded interviews, body-worn camera footage, etc.
 - Coordinates with the requesting member to complete tasks associated with the lineup preparation and execution (e.g., logistics, resources, notifications, etc.).
- NOTE:** Locating, scheduling and ensuring the participation of victim/witnesses shall be the responsibility of the investigating member. The Robbery Unit detective (case coordinator) may assist, but the responsibility of producing the victim/witness rests with the requesting command.
- Liaises with the investigating member to select appropriate "fillers" in compliance with this SOP (see below).

Administering Member

- Will be the person administering the lineup to the victim(s)/witness(es) and has no knowledge of which person in the lineup is the suspect/defendant.
- Will be a sworn member of any rank designated by the Robbery Unit supervisor, and will be thoroughly familiar with the procedures in this SOP.
- Will provide instructions to the victim/witness prior to the lineup and without other victims/witnesses present. A Presentation Script/Lineup form will be used for reference and will include, minimally,:
 1. The administering member does not know who the suspect/defendant is.
 2. The suspect/defendant may or may not be among those in the lineup, and therefore, he/she should not feel compelled to make an identification.
 3. The investigation will continue regardless of whether an identification is made.
 4. If an identification is made, he/she will be asked to state, in his/her own words, how certain he/she is of the identification.
 5. The persons will be presented one at a time (sequentially).
 6. The persons will appear in random order.
 7. All persons will be shown even if an identification is made prior to viewing all individuals.
 8. He/she may take as much time as needed in deciding about each person.
 9. He/she should not discuss the identification procedure or its results with other victim(s)/witness(es) involved in the case and are discouraged from contacting the media.

- Will be responsible for any questions and communication with the victim/witness during the identification process.

Pre-lineup Procedures

- The lineup room (the space where the suspect/defendant and fillers will be presented) will be inspected beforehand and cleaned of any foreign objects/debris. The room will also be inspected for functionality (e.g., working doors, lighting, etc.).
- Victim(s)/witness(es), attorneys and others with legitimate needs will be brought to the stage area and briefed on the process and what to expect.
- The suspect's/defendant's attorney will be instructed that he/she will not be allowed to interview or question the victim/witness.
- Reasonable requests made by the suspect's/defendant's attorney may be honored, if possible. Those requests and the resulting responses will be documented. The Robbery Unit supervisor may consult with the Assistant State's Attorney regarding requests.

Fillers

- Fillers are non-suspect lineup participants and may include sworn members, cadets, recruits, or inmates. **NOTE:** If inmates are used as fillers, then all fillers in the lineup should be inmates. The commingling of inmates with non-inmates should be avoided unless absolutely necessary and only with the approval of the Robbery Unit Commander.
- Only fillers resembling the witness's description of the suspect/defendant in significant physical features will be used and should have a consistent appearance to the suspect/defendant so as to present a group of individuals similar in age, height, weight, gender, race, and general appearance as the suspect/defendant.
- Fillers will appear in similar attire, and any distinguishing marks or tattoos will be covered, if possible. Hats, glasses, wigs and other props or accessories may be used, if required, but must also be similar in appearance.
- Inmates who volunteer to serve as fillers pose additional security issues than non-inmates and demand the highest level of attention of all members involved in the lineup process. As such, inmates used as fillers require special procedures, to include the following:
 1. The Robbery Unit Supervisor will coordinate with the Baltimore County Detention Center (BCDC) to seek inmate volunteers who are suitable fillers as described in this SOP.
 2. Prior to selecting inmates for participation, careful consideration will be taken by the Robbery Unit Supervisor, in consultation with BCDC and the Criminal Intelligence & Homeland Security Section, regarding the background of the inmate volunteers. Attempts will be made to avoid using inmates with rival gang affiliations, special security considerations (e.g., escape risks, suicide attempts, etc.) and the like.
 3. Inmates volunteering for lineups are to be secured by handcuffs/waist chains and shackles during transport and any time not engaged in the actual lineup.
 4. Elevators used for inmate fillers are not to be shared or open to civilian use. Arrangements will be made with the Materials and Facilities Management Unit (Building Security Team) for lineups conducted in the Public Safety Building.
 5. Inmate fillers will be kept separate from the suspect/defendant if the suspect/defendant is not incarcerated (non-custodial) at time of the lineup.
 6. Inmate fillers shall be compensated \$4.00 from petty cash funds for their services. The money is to be given to the BCDC and not directly to the inmate. Receipts will be obtained.
 7. Inmate fillers will be afforded a phone call, refreshments, and access to restrooms.

Lineup Procedures

- Only one victim/witness at a time will view the lineup. The assigned supervisor will make decisions/arrangements regarding any witness requiring an escort or special needs (e.g., young, elderly victims, those with disabilities, etc.).
- Separation of victims/witnesses before, during, and after a lineup procedure is a critical part of the process. Reasonable precautions will be taken to ensure victims/witnesses who are waiting to

view the lineup do not have contact with or see the participants. Victims/witnesses, after viewing the lineup, shall be escorted and have no contact with other victims/witnesses.

- At least **four** fillers, in addition to the suspect, shall be included in a live lineup.
- Only **one** suspect/defendant shall be shown in each lineup.
- When showing a new or additional suspect/defendant to the same witness, new fillers must be used.
- A minimum of two guards shall be deployed on the lineup stage if inmates are being utilized as fillers.
- The suspect/defendant may choose the order in which he/she will appear in the sequence, if they desire. If more than one victim/witness views the lineup, the suspect/defendant will be placed in a different order in the sequence for each identification procedure conducted for each victim/witness.
- The suspect/defendant and fillers will be shown to the victim/witness one at a time in a sequential order and not as a group.
- The victim/witness will signal when to move to the next subject.
- All persons will be shown to the victim/witness until they have all been viewed, even if an identification is made.
- The victim/witness may request to see the subjects a second time; however, the order in which the participants are viewed must remain the same and all persons must be viewed a second time.
- When a victim/witness makes a selection but expresses uncertainty, clarifying questions may be asked to obtain as much information as possible to ascertain what the similarities and differences are between the subject identified in the lineup and the suspect.
- A Form 45, *Lineup Identification Record*, will be completed for each showing of the lineup and any change in the participants' sequence order.
- During the lineup, inmates, suspect/defendant, and volunteers will only be referred to or addressed by the number in the sequence in which they appear (e.g, Subject #1 , Subject #2, etc.).
- The administering member is the only person to direct the movement and actions by participants on stage during the show.
- Forensic Services Section personnel will be present and photograph or video record each lineup, change in sequence order, and final sequence order after each identification is made. A Form 127, *Photographic Request*, should be completed at least 3 days in advance if possible.

Post-lineup Procedures

- After the victim/witness views the lineup, he/she will be escorted by a member to an interview room where a Form 85-A, *Lineup Identification Form*, will be completed. A statement will be obtained from the victim/witness regarding the identification, if made, and the suspect's/defendant's role in the crime.
- An appropriate incident report will be completed documenting the results of each identification process to include, minimally,:
 - All identification and nonidentification results;
 - The names of all persons present at the lineup;
 - The date and time of the identification procedure;
 - Any eyewitness identification of a filler; and,
 - All participants used in the lineup and the order in which they were presented to the victim/witness.

7-9.2 PHOTOGRAPH IDENTIFICATION

DEFINITIONS

- Blinded Administering Officer -an officer who presents the photo display to the victim/witness without having knowledge of which photograph is being viewed by the witness at the time.
- Sequential photo display -a method of displaying a photo display during which the photographs are viewed by the victim/witness one at a time, rather than all at once.
- Folder shuffle -a method of administering a photo display in which the administrator does not control the order of presentation of the photographs, and learns the order of presentation after the process is complete.

SEQUENTIAL PHOTO DISPLAYS

- Are conducted using a blinded administering officer and folder shuffle to eliminate inadvertent and nonverbal clues as to the identity of a possible suspect.
- Contain one possible suspect photo and five filler (i.e., non-suspect) photos.

PHOTOGRAPHS

- Are only to be used to identify logical suspects.
- May be obtained from the EBooking system, other jurisdictions, or created with other photographs, utilizing the guidelines below.
- Must be presented in a sequential format, in six folders.
- Should be similar in facial hair, hairstyle, age, and unique and unusual features (e.g., scars, marks, and tattoos, etc.).
- Should be of the same type (e.g., black and white, color, school yearbook, etc.) size, and contain a similar background.
- Should resemble the suspect's description or appearance at the time of the incident.
- The photo source, identifying numbers, and dates will be taped or blacked out prior to showing them, if applicable.

INVESTIGATING OFFICERS

- Create the photo display and complete a Form 126, Witness Identification Admonition (original and one copy).
- Complete a separate photo display and Form 126 for each suspect utilizing new filler photographs when there are multiple suspects.
- Permanently attach (e.g., staple, glue, tape, etc.) the photographs to the inside of the folder.
- Write a number, one through six, below the photograph inside each folder.
- Shuffle the folders so that the order of presentation is not known.
- Read the admonition on the Form 126 to each victim/witness, and have the victim/witness initial before each statement to verify their understanding.
- Show the folders one at a time to the victim/witness in a manner that prevents the administering officer from seeing which photograph is being viewed.
- Have the victim/witness signal when to move to the next photograph.
- Continue showing the photos until all photos have been viewed, even if the suspect is identified.
- Allow the same victim/witness to view the display a second time if necessary.
- Show the photo display to each victim or witness separately when there are multiple victims/witnesses. Victims/witnesses will not be permitted to communicate with each other until after the photo display has been completed and will be instructed not to discuss their identifications with anyone else.
- Have the victim/witness note all comments (exactly as spoken) as to the identification of a suspect in the "Witness Comments" section of the Form 126. This will be in their own handwriting. The victim/witness will then sign and date on the photo of the identified subject, if applicable, and the witness section of the Form 126.
- When a victim/witness selects a photograph, but expresses uncertainty, question the victim/witness to obtain as much information as possible to ascertain what the similarities and differences are between the photograph selected and the suspect.
- Complete an updated version of the Case Report or an Officer Report, which indicates the:
 - Photo source or identifying numbers of all photographs shown.
 - Date and location the photo display is shown.
 - Name of the person to whom the photographs were shown.
 - Number of the photograph identified, if applicable.
 - Name of any suspect.
 - Statements made by the victim/witness, including the role which the identified subject played in the crime.
- Package the photo display as evidence once it has been shown to the witness. Any and all photo displays created, viewed, identified, or not identified must be packaged as evidence and sent to the Evidence Management Unit (EMU).
- Distribute the Form 126 as follows:
 - Original -accompanies the photo display.

- Copy -precinct/division files.

7-9.3 SHOW-UPS

GENERAL

- Show-ups are “one-on-one” identification procedures in which a victim/witness is presented with a suspect(s) within a reasonable length of time following the commission of a crime for the purpose of determining whether the victim/witness identifies the individual as the suspect.
- If a suspect held in custody has been officially charged (issued a copy of the Statement of Charges), a show-up will not be conducted. Refer to line-up procedures for the purposes of identification.
- Show-ups will not be conducted with more than one victim/witness present at a time. If there is more than one victim/witness, the show-up must be conducted separately for each victim/witness. Victims/witnesses will not be permitted to communicate before or after any show-up regarding the identification of the suspect. **NOTE:** The same suspect will not be presented to the same victim/witness more than once.

INVESTIGATING OFFICERS

- May arrange a show-up between a victim/witness and a suspect whenever a potential suspect is located and detained within a reasonable length of time in proximity to the location of the crime, and fits the description of the suspect given by the victim/witness.
- Obtain a detailed description of the suspect before a show-up is conducted. The victim/witness must advise the officers that they will be able to recognize the person who committed the crime prior to the show-up.
- Will not take a suspect to the precinct for a show-up. The suspect will be detained at the place he/she was located in the least restrictive manner possible that will ensure the suspect remains with the officer.
- Complete a Form 126, Witness Identification Admonition (original and one copy), prior to conducting a show up. Each admonition will be read by the officer to the victim/witness, and will be initialed by the victim/witness after being read by the officer. The victim/witness will also write any comments in the space provided and sign the form.
- Transport the victim/witness to the suspect’s location for the show-up. Care will be used to shield the victim/witness from being seen by the suspect. **NOTE:** Suspects will not be transported to the victim/witness location unless exigent circumstances exist.
- May transport the victim/witness to canvass the general area in which a crime has occurred with the hopes of spotting the suspect and arranging a show-up identification.
- If the subject detained is not identified by a victim/witness as the suspect and officers lack any other probable cause for an arrest, the officer will release the subject and document the information.
- Complete an updated version of the Case Report or an Officer Report, which includes the:
 - Name of the officer(s) who detained the possible suspect.
 - Date, time, and location of the show-up.
 - Full information of the detained possible suspect (e.g., name, gender, race, date of birth, address, and physical description, etc.).
 - Results of the show-up and any statements made.
 - Name of the victim/witness who viewed the possible suspect.
 - Name of the officer who transported the victim/witness and the type of transportation (e.g., marked, unmarked, nondescript, etc.). **NOTE:** The transporting officer will complete an Officer Report, whether or not a Statement of Charges is completed.

FORM 126, WITNESS IDENTIFICATION ADMONITION, DISTRIBUTION

- Original -forwarded by the supervisor to the Information & Records Management Unit.
- Copy -held in the precinct/division files.

7-9.4 FORENSIC ARTIST COMPOSITES

GENERAL

- May be requested by the investigating officer, with approval from his/her supervisor, by contacting the Criminal Investigations Bureau (CIB) Robbery Unit.
- Composites will not be created or attempted by anyone other than those approved to do so.

FORENSIC ARTIST SERVICES

- Are used on a case-by-case basis depending on the seriousness of the crime and merits of the case.
- Require consultation with and approval of the investigating officer, forensic artist, and the Robbery Unit Commander.

REFERENCE

Background

Historically, forensic artist resources have been available on a limited basis by utilizing volunteer detectives and officers who possess a certain set of skills. Those trained and capable have and continue to serve in an ad-hoc role. The use of this resource continues to grow and the demand becomes greater in regards to investigations. The science, training and application of this resource has expanded. Forensic artists are used for more than just composite sketches. Post-mortem sketches, age progression, skull reconstruction and image modification are now and continue to be valuable resources offered by forensic artists. These services have been made available and are used by other area law enforcement agencies as well as the members of our department.

Purpose

To establish written procedures and guidelines for the use of forensic artist resources in criminal investigations and matters of public safety, To effectively manage and develop this resource and its value as it relates to investigations.

Relationship to Department Values

The Criminal Investigations Division is committed to providing **SERVICE** and ensuring **INTEGRITY** in the use of forensic artist resources.

Procedures

Continuity and integrity of the duties performed by qualified Forensic Artists is crucial to any case undertaken by this agency. Documentation and the retention of evidence/work product is critical to the investigation or use later in a cold case situation.

Composite sketches and other forensic art work products are not intended to be a substitute for thorough investigative practices. They are designed to serve as valuable resources to enhance and be part of the gathering competent evidence to prove or disprove identities and/or involvement of individuals related to an investigation.

Qualified forensic artists serve in an ad-hoc capacity and may be assigned in varying commands. Their activity and application of services must be managed to ensure the integrity of their work product, documentation and retention of evidence. Cooperation is paramount between the forensic artists and their supervisors to continue the success and maintain the availability of this valuable resource.

Requests:

1. Must include a brief summary of the case and justification for the use of a Forensic Artist
2. Must be:
 - a. Approved by the investigating officer/detective's supervisor.

- b. Made to the Robbery Unit Commander or by contacting the Police Liaison if after regular office hours. The Robbery Unit Commander, or designee, will maintain the list of qualified forensic artists and a record of forensic artist activities and cases.
3. Disputed or when in conflict with the use of forensic art services, will be reviewed and resolved by the Robbery Unit Commander.
4. Will be forwarded by the Robbery Unit Commander to the artist's supervisor for approval and scheduling. The artist's immediate supervisor will determine the artist's availability. The supervisor will make every effort to accommodate requests to avoid negative impact upon the artist's regular duty assignment,
5. From other agencies, must be made in writing to the Robbery Unit Commander. The requesting agency will be advised they are responsible for all materials costs.

Forensic Artists

1. Meet with the investigating officer and conduct a comprehensive review of the case to determine if forensic art services are appropriate.
2. When involving the use of a witness, will:
 - a. Assess the witnesses' capability to offer evidence.
 - b. Make arrangements for the interview and creation of the composite in an environment that minimizes distractions.
 - c. Conduct interviews with witnesses separately when there are multiple witnesses.
 - d. Explain the forensic art process and how the resulting composite may be used as part of the investigation.
 - e. Determine with the witness if the completed composite is a reasonable representation of the subject.
3. Document work on each case on a Supplement, Form 11, or a Confidential, Form 47, accordingly, Composite sketches will also be documented on a Facial ID Fact Sheet, Form 129.
4. Submit original forensic art products and the related Form 129, if applicable, as evidence per rules and regulations.
Exception: Products created for other agencies will be released to the requesting agency.
5. Confer with the requesting investigator/supervisor regarding the accuracy of the composite created based on certainty of witnesses, interviews and other observations/information gained from the process.
6. Maintain a portfolio of information pertaining to their specialized training, credentials, certifications, requests and activities/products completed.

7-9.5 SKETCHES

GENERAL

- The person processing the scene will make a rough sketch and measurements, including sufficient information to be drawn to scale.
- Sketches should include dimensions, relation of the crime scene to other buildings, geographical features, roads, the exact address of the crime scene, location of significant features of the scene, name of the person preparing the sketch, the direction of north, and the location of physical evidence.